

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
GORDON H. BALL, INC., )  
Appellant, )  
vs. )  
SOUTHWEST AIR POLLUTION )  
CONTROL AUTHORITY, )  
Respondent. )

PCHB No. 527

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER being an appeal of a \$250.00 civil penalty for an alleged open burning violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 6th day of May, 1974, at Kelso, Washington; and appellant, Gordon H. Ball, Inc., appearing through its project engineer, Virgle Barnett and respondent, Southwest Air Pollution Control Authority, appearing through its attorney, James D. Ladley; and Board member present at the hearing being W. A. Gissberg; and the Board having considered the transcript, exhibits, records and files herein and having entered on the 23rd day of May, 1974, its proposed Findings of Fact, Conclusions of Law and Order; and the Board

1 having served said proposed Findings, Conclusions and Order upon  
2 all parties herein by certified mail, return receipt requested  
3 and twenty days having elapsed from said service; and

4 The Board having received no exceptions to said proposed  
5 Findings, Conclusions and Order; and the Board being fully advised  
6 in the premises; now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
8 Findings of Fact, Conclusions of Law and Order, dated the 23rd day  
9 of May, 1974, and incorporated by this reference herein and attached  
10 hereto as Exhibit A, are adopted and hereby entered as the Board's  
11 Final Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 24<sup>th</sup> day of June, 1974.

13 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward  
15 WALT WOODWARD, Chairman

16 W. A. Gissberg  
17 W. A. GISSBERG, Member  
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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
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An informal hearing on the appeal of Gordon H. Ball, Inc. to a Notice of Civil Penalty of \$250 for an alleged open burning violation of respondent's Regulation I came before Board member W. A. Gissberg on May 6, 1974 in Kelso, Washington.

Appellant appeared through its project engineer, Virgle Barnett; respondent through its attorney, James D. Ladley.

From the testimony heard, exhibits examined and transcript reviewed, the Pollution Control Hearings Board makes these

EXHIBIT A

FINDINGS OF FACT

I.

Gordon H. Ball, Inc. at all times hereinafter mentioned as appellant, was engaged in carrying out a contract with the Washington State Department of Highways requiring it to clear a right of way and construct a highway near Kelso, Washington. A part of that contract required appellant to remove an old dwelling which was within the right of way of the area covered by appellant's contract.

II.

On January 7, 1974, at approximately twelve o'clock noon, an open fire was observed by an inspector on respondent's staff within that portion of the I-5 right of way covered by appellant's contract. The fire was approximately ten feet in diameter and composed of wood debris and asphalt shingles. One of the foremen employed by appellant stated that the fire had been burning when he arrived at work at approximately 8:00 a.m. that morning, but that since the fire was not hurting anything he allowed it to burn. When requested to do so, appellant's employees promptly extinguished the fire. Respondent caused Notice of Violation No. CS 1025, a citation for violating Section 4.01 of its Regulation I and a subsequent Notice of Civil Penalty in the amount of \$250 to thereafter be served upon and mailed, respectively, to appellant. Appellant was possessed of a burning permit which enabled it to burn natural vegetation. That permit had been issued by the Department of Natural Resources. There were at least three other large burning piles of natural vegetation being burned on the same day that the burn of the building debris took place.

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 III.

2 Section 4.01 of respondent's Regulation I makes it unlawful to  
3 cause or allow any outdoor fire containing asphalt, petroleum products,  
4 paints, rubber products, plastic or any substance which normally emits  
5 dense smoke. Appellant admitted that the fire contained asphalt shingles  
6 and painted boards but denied that its employees ignited or caused the  
7 fire to be ignited.

8 IV.

9 Appellant has not been charged with any other violations of  
10 respondent's Regulations either before or after the one which is the  
11 subject matter of this appeal.

12 V.

13 Any Conclusion of Law which may be deemed to be a Finding of Fact  
14 herewith is adopted as same.

15 From which the Board makes the following

16 CONCLUSIONS OF LAW

17 I.

18 When appellant's employees became aware of the fire at 8:00 a.m.  
19 and did nothing to extinguish it until ordered to do so by respondent's  
20 inspector, such actions of appellant's employees are the actions of the  
21 appellant on the principle of respondeat superior.

22 II.

23 Appellant was in violation of Section 4.01 of respondent's  
24 Regulation I for allowing an outdoor fire of prohibited materials.

25 III.

26 We would not hesitate in sustaining the entire civil penalty of

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 \$250 if we were convinced that appellant had caused the fire to be  
2 ignited. However, that is not the case. The gravamen of the violation  
3 here is that appellant's employees allowed the fire of prohibited  
4 materials to continue.

5 IV.

6 Any Finding of Fact which may be deemed a Conclusion of Law is  
7 herewith adopted as same.

8 From which the Board enters this

9 ORDER

10 The appeal is denied, but \$150 of the civil penalty is suspended  
11 if appellant does not violate respondent's Regulation I for six  
12 months from the date of this Order.

13 DONE at Lacey, Washington this 23<sup>rd</sup> day of May, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15 Walt Woodward  
16 WALT WOODWARD, Chairman

17 W. A. Gissberg  
18 W. A. GISSBERG, Member

19 Mary Ellen McCaffree  
20 MARY ELLEN McCAFFREE, Member

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26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER